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HOUSE BILL 1384 By
Davis (Cocke)

SENATE BILL 1661
By Fowler

AN ACT to amend Tennessee Code

Annotated, Section 68, Chapter 11, Part 2.

**relative to the operation of unlicensed health care
facilities**

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 68-11-201, is amended by amending subsection (13)(A) and adding a new subsection:

(13)(A) “Home for the aged” is amended by deleting the word and figure one (1) and substituting in its place the word and figure four (4);

() “Facility” means any institution, place or building providing health care services that is required to be licensed under this chapter.

SECTION 2. Tennessee Code Annotated, Section 68-11-213, is amended by adding new subsections (b) and (c) and renumbering the remaining subsections appropriately:

(b)(1) A department representative may, with consent of the facility, the patient or resident, located in the facility alleged to be operating without a license under this part, or the legal guardian of such patient or resident, enter the facility in order to investigate or inspect for compliance with this part.

(2) If consent is not obtained, the department representative, upon reasonable belief that a facility required to be licensed under this part is operating without a license, is authorized to enter such facility without prior notice or the necessity of obtaining a search warrant to:

- (A) interview any resident or patient related to services being provided by such facility to the resident or patient;
- (B) review any records required under this part or the implementing regulations thereto; or
- (C) inspect and investigate for compliance with federal and state law relative to such facilities.

(3) Inspections conducted pursuant to this section shall be conducted in a manner so as to minimize disruption.

(4) If a determination is made by the department that a home or business should be licensed, the home or business will have thirty (30) days from the time notice of the determination is received to apply for licensure. Failure to apply for licensure within the thirty (30) days may result in an action for a cease and desist order being filed with the Board.

(c)(1) If the board finds that a facility that is required under this part to be licensed is operating or providing services without a license, the board may, without prior notice, order the facility immediately to cease and desist from operating without a license. The board must find that entering the order is in the public interest; is necessary for the protection of the health, safety, or

welfare of the patients or residents of the facility; and is consistent with the purposes fairly intended by this part.

(2) The order must state the relevant findings of fact and conclusions of law that support the board's findings that the facility is operating without a license and that entering the order without prior notice is in the public interest, necessary for the protection of the clients of the facility, and consistent with this part. The order must provide notice to the respondent of the respondent's rights and responsibilities concerning seeking review of the order, as set out herein.

(3) The owner of the facility ordered to cease and desist operation may seek review of the order before the board by filing a request for a contested case hearing pursuant to the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-301 et seq. The request must be filed with the board and the Administrative Procedures Division of the Office of the Secretary of State within thirty (30) days of entry of the cease and desist order. The sole issue to be determined at such hearing is whether the facility was operating without a license as required by this part prior to or concurrently with the date of the entry of the order. Any member of the board who participated in the issuance of the cease and desist order shall not be disqualified from participating in the contested case hearing. This part and the board rules control this determination. As a result of such hearing, the order may be upheld, amended, or rescinded. The original or amended order shall become a final order seven (7) days after entry.

(4) If the respondent fails to request a contested case hearing under subsection (3), then the cease and desist order becomes a final order of the board on the thirty-first (31st) day after its entry. The respondent may obtain judicial review of this final order in the chancery court of Davidson County under the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3.

(5) It is a Class B misdemeanor to violate a cease and desist order lawfully entered by the board. Each day of operation in violation of the board's cease and desist order, calculated from the date of its service upon the owner or operator of the facility, is a separate offense.

(6) The Department may assess a civil penalty not to exceed five thousand dollars (\$5000) against any facility who is found in violation of a cease and desist order lawfully entered by the board. Each day of operation in violation of the board's cease and desist order, calculated from the date of its service upon the owner or operator of the facility, is a separate offense.

(7) The board is authorized to hold contested cases regarding the appeals of civil penalties assessed pursuant to this subsection. Any member of the board who participated in the issuance of the cease and desist order shall not be disqualified from participating in the contested case hearing.

SECTION 3. The commissioner and the board are authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the Uniform Administrative Procedures Act compiled at Tennessee Code Annotated, title 4, chapter 5.

SECTION 4. This act shall take effect upon becoming law, the public welfare requiring it.